IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Jail Appeal No. 1811/2001

Joga Ram … Appellant.

Vs.

State of Uttaranchal .. Respondent.

Decided on 26-7-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(Rajesh Tandon, J.)

Dated: 26-7-2005.

In the High Court of Uttaranchal, at Nainital.

Criminal Jail Appeal No. 1811/2001

Joga Ram S/o Ram Lal @ Gid Ram
R/o Village Saknyora, Patwari Circle
Mahrudi, Tehsil and District Bageshwar … Appellant.

Vs.

State of Uttaranchal .. Respondent.

Sri Rajendra Kotiyal, Advocate, learned Amicus Curiae for the appellant.
Sri Nandan Arya, learned A.G.A. assisted by Ms. Nishat Intezar brief holder for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Dated: 26-07-2005

(Per : Hon'ble Irshad Hussain, J.)

Accused preferred an appeal against the judgment dated 28-8-2001 passed by the then Sessions Judge, Almora convicting and sentencing him under Sections 302 and 307 I.P.C. to undergo Life Imprisonment under the first count and R.I. for five years and five of Rs. 500/- and in default of payment of fine to further undergo imprisonment for six months under the second count.

2- Prosecution case briefly stated was that at about 11 A.M. on 23.3.1998, in village Saknyora, Patwari Circle Mahrudi, Tehsil Bageshwar accused committed murders of his father Ram Lal and co-villager Madan Ram both aged about 65 years by giving them fatal iron axe blows and further made an attempt to commit murder of Smt. Sabuli Devi wife of Madan Ram and caused her injury. The incident created panic in the village and on account of the terror of the accused people at large were not feeling safe. Narrating the incident in the written report, Ext. Ka.1 village Pradhan Bahadur Ram (P.W.2) requested the Naib Tehsildar, Bageshwar to initiate proceedings against the accused and further to provide security to the villagers. The report was received on 23.3.1998 itself by the Naib Tehsildar who made an endorsement on the written report directing the Circle Patwari Mahrudi to register a case and initiate the legal proceedings. In compliance thereof check F.I.R., Ext. Ka.9 was drawn at 8 P.M. on

23.3.1998 by the Circle Patwari who also started investigation of the case.

3- Circle Patwari Jait Singh Khetwal, (P.W.4) on reaching the village of the occurrence held inquest on the dead bodies of the victims which were then sent for post mortem. On 24.3.1998 from 3 P.M. to 3.40 P.M. Dr. N.D. Punetha performed post mortem examinations on the dead bodies. Injured Smt. Sabuli Devi (P.W.1) was medically examined by Dr. Manbar Vinod Kumar of Community Health Center, Bageshwar and injury report, Ext. Ka.8 was prepared. Accused was arrested on 25.3.1998 and an iron axe was attached from his house which was thrown there by the accused while he was being arrested by the circle patwari with the help of the villagers. Some injuries were found on his person and he was medically examined the same day at C.H.C. Bageshwar. Other formalities of the investigation were also completed and finally charge sheet, Ext. Ka.17 was filed against the accused on 11.6.1998. Accused was committed to court of Sessions by C.J.M. Almora on 1.7.1998 and charges against him were framed on 5.12.1998 by the then Sessions Judge, Almora. Accused pleaded not guilty and contended that after the double murder was committed in the village he was going to report the matter to the police but the villagers did not permit him to leave the village and gave him beating . According to him injured eye witness Smt. Sabuli Devi was interested in taking his landed property illegally and that he has been falsely implicated in the case.

4- In order to bring home guilt to the accused, prosecution examined four witnesses and also relied upon the documents which shall be referred subject to their relevancy in the appreciation of the evidence. P.W.1, Smt. Sabuli Devi is the sole eye witness of the occurrence of the case. At about 11 A.M. on the day of the occurrence i.e. 23.3.1998 her husband Madan Ram deceased left the house for a shop and when he reached near the house of Ram Lal deceased, he shouted that Joga Ram had killed Ram Lal deceased. Smt. Sabuli Devi hearing the shout at once ran towards the place and found that Ram Lal was lying adjacent to the stairs of his house and writhing due to his injuries which were bleeding. At that time Madan Ram was seen rebuking severely accused Joga Ram as to why Ram Lal had been

killed by him. Accused Joga Ram then gave axe blows on the head of Madan Ram resulting which Madan Ram also fell dead on that very spot. When Smt. Sabuli Devi started raising alarm accused went after her and before she could be able to fled away she was made to receive one axe blow on her hand. She then told about the incident to village Pradhan Bahadur Ram who as stated above went to lodge the report of the occurrence.

5- P.W.2, Bahadur Ram proved written report, Ext. Ka.1 delivered by him to the Naib Tehsildar. Accused was arrested in his presence and he proved the arrest memo, Ext. Ka.3. At the time of the arrest the axe thrown away by the accused was attached in his presence by the Patwari vide memo, Ext. Ka.2.

6- P.W.3, Dr. N.D. Punetha held autopsy on the dead body of Ram Lal deceased at 3.40 P.M. on 24.3.1998 and prepared the autopsy report, Ext. Ka.6. Ante-mortem injuries detected were as below:-

1- Incised wound 18cm x 2cm x meninges deep present on the left side of head extending from forehead to the occipital region of head. Brain matter was coming out of the wound.

2- Incised wound 10cm x 2cm x meninges deep present on the left side of the occipital region of head.

On internal examination skull bones underneath the above injuries were found fractured. In his opinion the death was caused due to shock and haemorrhage resulting from the ante-mortem injury Nos. 1 and 2, about one day ago.

7- The Medical Officer performed post mortem examination on the dead body of Madan Ram at about 3 P.M. on 24.3.1998 and prepared the report Ext. Ka.7. The following ante-mortem injuries were detected:

1- Incised wound 15cm x 2cm x meninges deep present on the right side of the head extending from trogus of right ear to vertex of head. Brain matter was coming out of the wound.

2- Incised wound 10cmd x 2cm x bone deep present on the right side of the occipital region.

3- Incised wound 5cm x 1cm x muscle deep present on the right

side of the forearm in the middle.

On internal examination skull bones membranes injury Nos. 1 and 2 were found fractured and brain membranes were found lacerated. In the opinion of the Medical Officer death was caused due to shock and haemorrhage resulting from injury Nos. 1 and 2 about one day ago.

8- The Medical Officer was shown the iron axe, material Ext.1 and he opined that ante-mortem injuries of the two deceased could have been caused by it at about 11 A.M. on 23.3.1998.

9- The Medical Officer also proved the injury report, Ext. Ka.8 of injured Smt. Sabuli Devi by way of secondary evidence in view of the Medical Officer Dr. Manbar Vinod Kumar was, on account of illness, on medical leave for a long period. Both of them were posted together at the C.H.C. Bageshwar and P.W.3 was well conversant with the writing etc of Dr. Manbar Vinod Kumar. Smt. Sabuli Devi as per the report was examined at 3.40 P.M. on 24.3.1998 and following injuries were detected on her person:-

1- Incised wound 3.2 cm x 0.5 cm on middle finger of right Hand.

2- She complained of pain all over the body.

Injury No. 1 was caused by sharp and hard object about 1½ days ago and its nature was simple. According to the Medical Officer the injury could have been caused at about 11 A.M. on 23.3.1998.

10- P.W.4, Jaint Singh Khetwal was the Patwari of Mahrudi Circle on 23.3.1998 and case was investigated by him after he registered the F.I.R. on the basis of written report of the informant P.W.2. He reached the village of the occurrence on 24.3.1998 and held inquest on the dead bodies of Ram Lal and Madan Ram and prepared inquest reports, Ext. Ka.10 and Ka.11 respectively and other connected documents. He recorded the statement of injured Smt. Sabuli Devi and then dispatched the dead bodies for post mortem. On 27.3.1998 he recorded the statements of other witnesses. The site was inspected by him on 24.3.1998 and accused Joga Ram was arrested on 25.3.1998. The blood-stained clothes of the two deceased were also seized. He has submitted the charge sheet, Ext. Ka.17 against the accused on completion of the investigation.

11- No evidence was adduced in defence. The injury report of accused Joga Ram has however there on the record. As per its examination report (paper No. 30-A) Joga Ram was examined at Community Health Center, Bageshwar and seven injuries were found on his person.

12- The learned Sessions Judge on his appreciation of the evidence on record accepted the prosecution version mainly on the basis of the inference that the evidence of injuries eye witness Smt. Sabuli Devi was wholly reliable and which in fact was sufficient to bring home guilt to the accused and the accused was accordingly convicted and sentenced as above.

13- Learned Amicus Curiae for the appellant persuasively argument that the oral testimony of Smt. Sabuli Devi was not at all convincing as she could not be excepted to be there at the scene of the occurrence in time from her house, which was, as is evident from the site plan, Ext. Ka.12, not in the vicinity or at a close distance of the place of the occurrence. He then urged that the simple injury on her person was most probably manufactured or was self inflicted to show that she was the injured eye witness of the occurrence and that in the totality of the circumstances of the case the learned Sessions Judge fell in error in placing implicit reliance on her interested testimony. Learned counsel also urged that the F.I.R. of the case was prepared with a view to frame the accused in the crime with the consultation of the village Pradhan and further that the evidence was not reliable about the time and date of the arrest of the accused from the village. In his view these aspects of the matter create suspicion in the prosecution story, particularly when the accused has had no motive to commit the murder of his own father and a co-villager whom he himself referred to be his village uncle.

14- As against this learned A.G.A. submitted that the verdict of conviction as recorded by the learned Sessions Judge was legally correct on the plea that the conviction on the sole testimony of injured eye witness was justified and further that there was nothing irregular in the investigation of the crime by the circle patwari.

15- There can be no doubt that the deaths of Ram Lal and Madan Ram were homicidal and from the evidence on record it was

established that their murders were committed at about 11 A.M. on 23.3.1998 near the house of Ram Lal in Village Saknyora, Tehsil Bageshwar. On this aspect of the matter the learned Amicus Curiae appearing for the accused has also made no adverse comments and rather conceded that the two murders were committed at the time and place as alleged by the prosecution. There can also be no doubt that both the deceased were made to receive fatal incised wounds on their heads resulting which skull bones were fractured. It is also in the evidence of Smt. Sabuli Devi that she had seen accused Joga Ram wielding iron axe against her husband Madan Ram and further that she was also made to receive injury of this weapon at the hands of the accused. Moreover, in the face of the nature of the injuries and as affirmed by the Medical Officer Dr. N.D. Punetha (P.W.3) the weapon of assault was definitely an iron axe which is a heavy cutting weapon and capable of causing injuries of such dimensions and severity as were received by the two deceased and which have been mentioned in detail in the earlier part of the judgment.

16- We have the evidence of sole injured eye witness Smt. Sabuli Devi about the manner of the incident in which the two victims Ram Lal and Madna Ram were murdered. She is the wife of one of the deceased Madan Ram and accused referred to her as village aunt in his statement under Section 313 of the Code of Criminal Procedure. It is well settled that conviction can be found on the testimony of the sole interested witness, if, despite caution and careful scrutiny courts find the same to be otherwise reliable. In this backdrop the evidence of this witness need to be examined and considered keeping also in view the attending circumstances and the medical evidence of the case.

17- Smt. Sabuli Devi while in her house at about 11 A.M. on 23.3.1998 heard the loud voice of her husband Madan Ram who was then claiming that accused Joga Ram had assaulted Ram Lal and hearing the shout she at once rushed from her house and reached near the house of Ram Lal where she found Ram Lal lying near the stairs of his house and was writhing due to bleeding injuries. In her presence Madan Ram reprimanded the accused for assaulting his father by an axe. The accused was not deterred by the rebuke so given by Madan

Ram and even went on to give two iron axe blows on the head of Madan Ram also. On receiving these blows Madan Ram also fell dead there at the spot and so was the case with Ram Lal who had also breathed his last there at that place. Learned Amicus Curiae submitted that as is evidence from the medical evidence it could have been a job of few minutes to give four fatal blows on the heads of two deceased namely Ram Lal and Madan Ram and therefore it was highly improbable that within a very short period Smt. Sabuli Devi would have been able to reach there in time on hearing the shout, if any, of her husband Madan Ram, and thus the claim made by her could not safely be taken to be trustworthy. Learned Amicus Curiae also drew attention to the site plan, Ext. Ka.12 and submitted that the house of the witness has not been shown near the place of the occurrence and since the house of the witness was not in the close vicinity there was no occasion for her to hear the shout of her husband an then to reach at once at the scene of the occurrence to enable herself to witness the assault being made by the accused on her husband by wielding iron axe. No doubt the house of the witness was not shown in the site plan but the evidence of the witness was cogent and definite that her house was situate at a distance of 10-15 paces from the place of the occurrence and that her field is also adjacent to her house from where she reached to the place of the occurrence on hearing her husband's shout. The Investigating Officer Jait Singh Khetwal (P.W.4) was also cross-examined on this point whereupon he gave out that the house of Smt. Sabuli Devi was situate at a distance of 10-15 paces from the house of Ram Lal deceased and further that the field of the witness was also just adjacent and adjoining to the house of the witness. From the searching cross-examination of these witnesses the defence failed to bring on record anything material to suggest that the claim made by them was not correct and that the house of the witness was situate at such a long distance from where she could not have heard the shout of her husband and could not have immediately reached there at the scene of the occurrence. therefore, the evidence of the injured eye witness having been corroborated by the evidence of the Investigating Officer prove beyond doubt that her house being not far-off from the place of

the incident, she has had every opportunity and occasion to reach the scene of the incident in time on hearing the shout of her husband and then to witness the assault by the accused on her husband Madan Ram, who was made to receive two blows of the iron axe on the head resulting his instantaneous death on the spot.

18- Learned Amicus Curiae then drew attention to the medical evidence in the case to bring home his point of view that as against the claim of Smt. Sabuli Devi, that the accused gave two axe blows on the head of her husband Madan Ram and no other blow was given by the accused in her presence, was against the factual aspect that as many as three incised wounds out of which two were on the head and one was on the right side of the fore-arm, were found on the person of Madan Ram deceased and this indicate that the witness was not present at the scene of the incident and her evidence, on being held untrustworthy, should have been rejected by the learned Sessions Judge. The third incised wound, as is evidence from post mortem report, Ext. Ka.7, on the right side of the forearm was of small dimension and was muscle deep only. The ante-mortem injury at serial No.2 in the post mortem report was bone deep incised wound on the right side of the occipital region of the head. Referring to these injuries learned A.G.A. urged that considering the simple injury No.3 on the right side of the forearm the possibility can not be ruled out that the second blow of the axe given by the accused on the right side of head of Madan Ram could have also later-on landed on the right side of the fore-arm causing simple incised wound to the victim and that in view of the seat and nature of this injury it could safely be accepted that a third axe blow has not been given by the accused. Having regard to this aspect of the matter we are convinced that the argument of the learned A.G.A. should prevail on the submission of the learned Amicus Curiae and on account of the witness asserting that the accused gave two axe blows on the person of her husband Madan Ram, her evidence could not be said to be unreliable merely on account of presence of simple incised wound on the right forearm also. This apart, it is well settled that where the ocular evidence is cogent and credible, medical evidence to the contrary, can not corrode the evidentiary value of the former. Applying this principle also the

evidence of Smt. Sabuli Devi appear to us fully reliable and trustworthy and the same can not at all be viewed with disbelief for the above reason canvassed by the learned Amicus Curiae.

19- Attention was again drawn to the medical evidence with reference to the simple injury in the nature of incised wound on the middle finger of the right hand of Smt. Sabuli Devi in support of the argument that the injury could have been self-inflicted or manufactured one and it was so arranged that she could be projected as injured eye-witness of the incident to untie the knot of blind double murder committed in the village. It is in the evidence of the witness that when on seeing the incident as referred above she raised alarm, accused Joga Ram also came towards her and when an axe blow by the accused was intended to be given on her person it fell on her hand and she at once ran away from there to save herself. The witness had seen the accused fatally assaulting her husband after having already assaulted his own father Ram Lal and this must have made her conscious and also to be cautious of the move of the accused and therefore she was expected to have shown alertness to save herself when accused came forward to give axe blow on her person also and due to her such cautious movement the axe blow in all probability fell on the palmer aspect of her hand only instead of the blow landing on any vital part of the body. Therefore, simple incised wound on the finger of her hand would not indicate that the injury was self-inflicted or manufactured to guarantee her presence at the scene of the incident. Smt. Sabuli Devi was subjected to searching and piercing cross-examination but nothing of vital importance, as may show that she was not a reliable witness, could be brought on record and therefore the witness having stood the test of cross-examination, she established herself to be a wholly reliable eye witness of the occurrence. We, therefore, find it safe to subscribe to the similar view taken by the learned Sessions Judge who placed full reliance on her ocular testimony.

20- There can be no gain saying that her evidence was also of *res gestae* nature as provided under Section 6 of the Indian Evidence Act in regard to the fact that when she reached the scene of the occurrence after hearing the shout of her husband Madan Ram she found Ram

Lal lying near the stair of his house and writhing on account of Bleeding injuries on his person and when her husband Madan Ram rebuked accused Joga Ram for making assault on his own father the accused resorted to and wielded iron axe against Madan Ram also and fatally assaulted him then and there. Smt. Sabuli Devi had rushed to the scene of the occurrence on hearing the loud voice of her husband that accused Joga Ram had assaulted his own father Ram Lal. What was then seen by her at the spot and what her husband Madan Ram said in her presence about the assault made by the accused on Ram Lal form part of the same transaction as was deposed to by the witness and therefore her evidence in the nature of *res gestae* in regard to the assault by the accused on his own father Ram Lal was admissible in evidence particularly on account of the proximity of time when she reached there at the scene of the occurrence and saw Ram Lal lying there with bleeding injuries. The learned Sessions Judge also rightly considered this aspect of the matter and admissibility of the evidence of the witness in regard to the relevancy of the fact of assault by accused on Ram Lal also and which was forming part of the same transaction and the evidence of the witness was thus rightly held wholly reliable so as to prove that the accused fatally assaulted these victims and committed their murders.

21- Learned Amicus Curiae also adversely commented upon the investigation aspect of the case. According to P.W.2, Bahadur Ram the accused was arrested at about 1.30 P.M. in the night between 24/25-3-1998 from the house and whereas the Investigating Officer P.W.4, Jait Singh Khetwal gave out that the accused was arrested in the night of 26-3-1998. However at another place the I.O. also stated that the accused was arrested on 25.3.1998 which appear to be the correct version as the another date i.e. 26.3.1998 was given under some confusion when he was again put question in that regard. Moreover the injury report of accused Joga Ram (paper No. 30-A) reveal that he was medically examined at 1.45 P.M. on 25.3.1998 at C.S.C., Bageshwar and this could have been possible only when he had been arrested earlier on that day and not on 26.3.1998. Further according to the I.O. the accused was arrested from the house. Attention was drawn to the case diary of the case to suggest that the

accused was arrested from a ravine near the house when accused ran away from there after throwing the axe and that in the process the accused had fallen in the ravine and he was then over-powered by the villagers to effect the arrest. Even if such a description was made in the case diary regarding the arrest of the accused it would not tell upon the propriety of the steps taken during the investigation. At any rate even if there was some infirmity in the evidence of the Investigating Officer, about the formalities during the investigation these could not be treated as a ground to reject the prosecution case. It is well settled that any irregularity or even an illegality during the investigation should not be taken as a ground to reject the prosecution case. Therefore, the accused could not have been extended any benefit whatsoever on account of any infirmity or illegality during the course of investigation by the Circle Patwari Jait Singh.

22- An argument was also advanced about the veracity of the F.I.R. by referring to the delay in lodging the same. Occurrence took place at about 11 A.M. on 23.3.1998 whereas the F.I.R., Ext. Ka.9 was drawn and registered at 8 P.M. The distance of the Patwari Headquarter Mahrudi from the village of the occurrence is about three kilometers. However the written report by informant Bahadur Ram (P.W.2) was given to Naib Tehsildar Bageshwar who sent it to the Circle Patwari to register the F.I.R. and initiate the investigation. Naturally this must have caused some delay in reaching the report to the circle Patwari. This apart, P.W.2 gave out that to reach Bageshwar from the village of the occurrence at least 5 ½ hours were required. There is nothing in his cross-examination as may assail his claim in that regard and considering the time taken to reach Bageshwar from village Saknyora there appear to be not much delay in lodging the F.I.R. of the incident and by reason of this fact the veracity of the F.I.R. could not be challenged. In the check F.I.R. there is some overwriting about the time when the same was drawn at the Headquarter of the Patwari on 23.3.1998. It was shown to have been registered at 8. P.M. and the Investigating Officer, Circle Patwari Jait Singh was not cross examined about the overwriting so as to suggest that it was deliberately done to show some justification of delay in lodging the F.I.R. In the absence of any cross-examination in that

regard no adverse inference could be drawn in regard to the genuineness of the F.I.R. which otherwise contain the essential particulars of the occurrence and corroborate the evidence of the injured eye witness Smt. Sabuli Devi. The submissions on behalf of the accused were also rightly rejected by the learned Sessions Judge and the F.I.R. was held to be genuine and corroborating the oral evidence in the case.

23- The medical evidence of the case was referred to above in relation to the evidence of Smt. Sabuli Devi. As has been found medical evidence also corroborate the evidence of Smt. Sabuli Devi, which was also otherwise wholly reliable and capable of proving the case of the prosecution that accused Joga Ram committed the murders of his own father Ram Lal and village uncle Madan Ram at about 11.30 P.M. on 23.3.1998 in his village and also that he made an attempt to commit the murder of Smt. Sabuli Devi on the said time and place and caused hurt to her.

24- On the motive aspect of the case it was submitted that since no specific motive for the murders had been attributed by the prosecution, the accused could not have been held responsible for committing the murders of his own father and also that of his village uncle and therefore the learned Sessions Judge fell in error in not considering this vital aspect of the case. We see no merit in this argument because when there is reliable and trustworthy direct evidence about the occurrence the question of existence of motive to commit the murder loses significance and no adverse inference could then be drawn against the prosecution for want of proof of motive for the commission of the crime. It is also of significance that accused in his statement under Section 313 of the Code of Criminal Procedure admitted that these murders were committed in his village and claimed that he was beaten up by the co-villagers when he was going to report the matter to the police. The claim clearly appear to be highly unnatural and unrealistic particularly when he has not come forward with any version contrary to the prosecution story. Moreover it was in the evidence of the prosecution that he wanted to run away to evade his arrest by the Investigating Officer with the help of the co-villagers and fell in a ravine and was then overpowered by the

villagers. In that process he sustained simple injuries referred in the earlier part of the judgment and in this backdrop also the question of motive could not have been taken to upset the prosecution version and its wholly reliable evidence.

25- Upon consideration of the evidence on record we are convinced that the charges under Section 302 I.P.C. and 307 I.P.C. were established beyond doubt against the accused and he was rightly convicted and sentenced as aforesaid. The appeal from his conviction is liable to be dismissed.

26- The appeal is dismissed. The judgment dated 28-8-2001 convicting and sentencing the accused Joga Ram is hereby affirmed. The accused is in jail and he shall suffer the sentence so awarded.

27- Let the record be sent back to the court concerned.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

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